



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

Whistleblower Protection Authority Bill 2025

(Public)

WEDNESDAY, 13 AUGUST 2025

CANBERRA

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LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Wednesday, 13 August 2025

Members in attendance: Senators Chandler, Lambie, David Pocock, Polley [by video link], Shoebridge [by video link] and Stewart

Terms of Reference for the Inquiry:

On 23 July 2025, the Senate restored the Whistleblower Protection Authority Bill 2025 to the Notice Paper and referred the bill for inquiry and report.

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MIRAGAYA, Ms Carmen, Director, Public Interest Disclosure, Office of the Commonwealth Ombudsman

O'MEAGHER, Ms Rebekah, General Manager Legal, National Anti-Corruption Commission

REED, Mr Philip, Chief Executive Officer, National Anti-Corruption Commission

SAVUNDRA, Mr Chris, Executive Director, Enforcement and Compliance, Australian Securities and Investments Commission [by video link]

[11:48]

CHAIR: Welcome. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is also available from the secretariat. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Is there anyone who would like to make a brief opening statement?

Mr Reed: Yes.

CHAIR: Thank you, Mr Reed.

Mr Reed: We provided this for the record, but I just wanted to start by saying that the commission didn't make a submission to the inquiry into the Whistleblower Protection Authority Bill 2025, but we welcome the opportunity to attend this hearing and answer questions. But, as a result of not putting in a submission, we thought there were some elements that would be important to raise here and now rather than just have it on the record.

While some individuals are mandatory referrers under the NACC Act, and they must refer corruption issues of which they become aware to the commission, anyone can make a voluntary referral to the commission. This means that, while the commission's jurisdiction is focused on public officials, anyone who makes a referral to the commission attracts the protections that are afforded under the NACC Act. Accordingly, the commission recognises the importance of whistleblowers in combating corruption.

Corruption is often conducted secretly, depending on private influence and contact. For this reason, whistleblowers can play a critical role in exposing corruption and other conduct that would otherwise remain undetected and ultimately holding those responsible to account. Appropriate protections for whistleblowers are therefore important to facilitate, support and encourage the reporting of corrupt conduct by those most likely to have information about it. It's important that protections available to whistleblowers are clear and unambiguous so that potential whistleblowers can make informed decisions, so that disclosers are aware of and can invoke their protections, and so that those who might contemplate adverse action against the whistleblower are deterred.

The NACC Act protects persons who make disclosures to the commission from liability and reprisal. It also protects the confidentiality of their identity. Part 4 of the NACC Act provides protections for disclosers under the NACC Act from liability and reprisals. In particular, any person who makes a referral, provides information or gives evidence to the commission about a corruption issue—that makes it a NACC disclosure—is protected from all civil, criminal or administrative liability, including disciplinary action, for doing so, and no contractual right or remedy can be taken against them.

It's a criminal offence for anyone to take or threaten to take reprisal action of any kind against a person for making a referral, providing information or giving evidence to the commission. A reprisal is when a person causes another person detriment because they believe or suspect the other person has or may or could disclose corruption issues to the commission. Where a witness provides information to the commission as a result of the use of the commission's coercive powers, this information is also a NACC disclosure and thus attracts the liability and reprisal protections. In addition, it's an offence for commission staff to make a record of or disclose information obtained in the course of their duties unless permitted to do so by an exception under the NACC Act.

To date the commission has not, as a matter of practice, identified any issues with the operation of these protections. In its first two years of operation, the commission has received 5,400 referrals, including 220 mandatory referrals. Of these, four of the mandatory referrals were made under section 35 of the NACC Act, being mandatory referrals from PID officers who become aware of a corruption issue.

Ultimately, whether there should be a whistleblower protection authority, and the form it should take, are questions for government and this parliament. In relation to any interactions between a proposed authority and the commission, it's important that the commission's independence is maintained and investigations are not prejudiced.

Mr Anderson: My agency has a particular role with respect to the Public Interest Disclosure Act, so I'll comment on that. It's absolutely the case that whistleblowers need support and protection, and there are some gaps in the current regime. The bill proposes a model that would address some of those gaps. At the same time, it's important to bear in mind that the PID Act is an overly complex, overly prescriptive regime, in my view, and if the legislation is not simplified then the Whistleblower Protection Authority will not go as far as it might be expected to go in assisting disclosers or in assisting agencies to elevate the purpose of the regime over the processes that are currently laid down in the legislation.

Mr Savundra: ASIC didn't make a submission to the inquiry, but we're very grateful for the opportunity to appear today and we stand ready to assist the committee with its work. Whistleblowers play an important role in uncovering misconduct. ASIC very much values the information we receive from whistleblowers; it helps expose misconduct that might otherwise go undetected for long periods and cause serious harm to consumers and to investors. We acknowledge that whistleblowers can find themselves in difficult and stressful circumstances which often involve putting their careers at risk, and it's important, therefore, that Australia has strong and effective laws to protect whistleblowers.

The Corporations Act provides two types of protection for whistleblowers. The first is a prohibition on whistleblower victimisation and the second is a breach of confidentiality in relation to the whistleblower's identity. ASIC is empowered to investigate and to take enforcement action in response to contraventions of those prohibitions. Civil remedies are also available to a whistleblower who has been victimised or who has had their confidentiality breached.

For a whistleblower to receive protections under the Corporations Act, the disclosure must be made to ASIC, APRA, the AFP or a legal practitioner. Where the disclosure does not relate to conduct within ASIC's remit, ASIC may refer the matter to another Commonwealth, state or territory agency. We may also ask the whistleblower to raise their concerns directly with the relevant authorities. We stand ready to answer the committee's questions.

Mr Clayton: Thank you for the invitation to appear before the committee. We welcome the opportunity to provide insights from the New South Wales Ombudsman's experience overseeing the state's Public Interest Disclosures Act and the operation of our whistleblower support function.

As a New South Wales independent integrity agency, we don't comment on the policy merits of the Whistleblower Protection Authority Bill, and our submission provides context around the New South Wales Ombudsman's statutory oversight responsibilities under the New South Wales PID Act. At its broadest, this includes promoting a 'speak up' culture across the New South Wales state, local government and university sectors. While this involves supporting sector-wide capability, it also includes helping individual public officials navigate the process of making a public interest disclosure.

A large part of our whistleblower support work is talking through the PID process, providing guidance on how to make an effective disclosure and providing ways for people to protect themselves from risks from making the disclosure. However, we are evolving the type of support we provide. For instance, we are commencing two externally operated pilot programs; one providing dedicated wellbeing support and another providing legal advice that will supplement the work and support we currently provide.

Our whistleblower support function is intended to complement, not replace, the duty of an agency to support whistleblowers. In that context, we see the function as enhancing our role in protecting the integrity of the state's whistleblower framework. Chris Banks and I are happy to answer any questions you may have on the New South Wales Ombudsman's role overseeing the New South Wales Public Interest Disclosures Act.

CHAIR: Thank you, Mr Clayton. We will now proceed to questions. Senator Pocock.

Senator DAVID POCOCK: Thank you all very much for your time today. I've got one question I'm keen to hear from everyone on. I might start with the Commonwealth Ombudsman. What challenge do you face in receiving whistleblower disclosures, especially when whistleblowers need ongoing support?

Mr Anderson: The greatest challenge we face is that, as Philip Moss identified in 2015, in order to proactively fulfil our functions under the legislation, we need to be resourced to do that. As far as I can determine, we've never received any resourcing for our functions under the PID regime. We do what we can; there is more that we can do. We do have powers to do more, but it's a challenge to find the resources to do all those different things.

Mr Reed: At this point in time, with the small number of matters that have been brought through as referrals, we haven't experienced any particular issues. We will treat all of the referrals—be they voluntary or mandatory—in a very similar way through our referral and assessment process, deciding which matters we may investigate at a later point. We'll put more resources in and, when we get to the point of investigations—particularly where we might end up in hearings—we have policies but also liaison officers to try and provide support to witnesses that will appear in our hearings.

Senator DAVID POCKOCK: Do you know how many whistleblowers have come forward to the NACC in your existence?

Mr Reed: What I said in my opening address was that we've only had four mandatory referrals from PID officers. That's a requirement—if there's a corruption issue which is perceived to be serious or systemic, it has to be referred to us. There have only been four referrals that way. The voluntary referrals that come through are not identified as PIDs. They're just people that are wanting to make referrals about corruption issues to the commission. We assess each of those on their merits.

Senator DAVID POCKOCK: So, if someone who's currently employed in the Public Service sends through a referral for what they think is corruption, you're not treating that as a disclosure under the PID Act? Are you not providing any support to them as a potential whistleblower?

Mr Reed: They have not identified it as a PID, so we deal with them as we would deal with any referrer, which is to ensure that we maintain confidentiality over the material. We get voluntary referrals from agencies as well as mandatory referrals. I think our processes, at this point, are pretty sound in terms of dealing with the people that are making referrals to us.

Senator DAVID POCKOCK: Could you put a number on them?

Mr Reed: We've had 5,400 referrals since we began on 1 July 2023.

Senator DAVID POCKOCK: Are you able to sort them for APS, please?

Mr Reed: We don't separate them. We're aware of where the mandatory referrers have come from; the voluntary people may tell us where they've come from, but they may not. It will depend on whether we need further information in terms of our assessment as to whether we get in contact with them and ask for further details. Confidentiality and maintaining a strong policy of ensuring that information is contained within the organisation is our approach to dealing with these sorts of issues.

Mr Clayton: The New South Wales PID Act commenced in October 2023, and we reported on the first nine months up to 30 June 2024. In that time, across the agencies captured by the PID Act, there were about 1,300 voluntary public interest disclosures made. Around 350 of those were made to integrity agencies, which are defined broadly within the PID Act. Most of the PID-makers chose to not be anonymous, so around 30 per cent of individuals making public interest disclosures decided to be anonymous through that process.

The whistleblower support function that we've got really tries to bring forward support to people that are looking to make disclosures in a way that better informs them about the process that they might be about to expect if they choose to make a disclosure. That's also available to people that have made disclosures already and are seeking support or advice in the middle of the process. The whistleblower support function officially commenced in our organisation in November last year, and, to date, we've had about 65 people come to us, in an independent way, to seek support.

Senator DAVID POCKOCK: Thank you. Finally, let's go to ASIC.

Mr Savundra: From ASIC's perspective, the most significant challenge is perhaps the gap between the whistleblowers' expectations or understanding of ASIC's role, and what ASIC's role is. Our role is to administer the legislated regime as enacted. We obviously seek to support whistleblowers to the extent we can but there are significant limitations to the extent of that support.

Our primary role is to assess those reports, make a decision in relation to the appropriate regulatory or enforcement response and then whether we're going to enforce the law. Whistleblowers will often want legal advice from us, and our role is not to provide that legal advice. The other expectation gap is I think we have to be necessarily selective in the cases that we pursue, given the resources available to ASIC and the breadth of our

remit. We do, nevertheless, seek to provide limited support. On occasions, we have procured limited legal advice for a whistleblower. We've also recently engaged a specialist whistleblower liaison officer with clinical skills. Many of the whistleblowers we're dealing with are under enormous stress, and sometimes they are in distress, so engaging with them in those circumstances can be challenging. I might see if my colleague from ASIC has anything to add.

Mr Hackett: I'd just add, we generally receive whistleblower disclosures through our website. I think in our last financial year we received about 700 whistleblower disclosures. Under the Corporations Act, there are certain people who can report to ASIC, and, by the nature of their position, will be eligible for whistleblower protections—not all of them report to ASIC. If a person is claiming whistleblower status or suggesting to us that the whistleblower protections are important to them—but generally it's 700 from about 10,000 reports of misconduct that we receive each year.

Senator DAVID POCOCK: Thank you.

CHAIR: I need to share the call, and I will go to the deputy chair, Senator Chandler.

Senator CHANDLER: Thank you all for attending today. I have one question that I suspect everyone will have some sort of a view on as it's relevant to your respective organisations. I'm keen to understand exactly how the authority that has proposed in this bill differs from your existing whistleblower protection mechanisms. This is an open question: do you think that existing agencies could be resourced to perform these roles instead creating a new body? We might start with the NACC if that's alright.

Mr Reed: Let me consider this for a moment, if you don't mind. In terms of what I described in my opening address as the protections under the NACC Act for whistleblowers, they exist at the moment. A new authority may assist potential disclosers who may be uncertain about correct reporting pathways and available protections and give them some further assistance. In the end, if it's established, the NACC and the authority having to work together on how to manage the interplay that is going to occur in terms of dealing with whistleblowers that come through our system or potentially come via the authority.

In my mind, it's probably pretty much the same as when we first arrived as the NACC with a large number of other integrity agencies already in existence within the Commonwealth. We ended up having to work with those authorities; those integrity authorities are defined under our act. For some of them, we've ended up with regular meetings. We have MOUs with others as a way of managing that interplay. I'm sure we would do similar things were this authority to emerge.

Senator CHANDLER: I do want to hear from other panellists, but is there an argument that that interplay needs to be codified in a more formal way than just having an MOU or each organisation regularly meeting with each other? Is that something that the parliament would be better off looking at legislating or at least regulating?

Mr Reed: I think it will ultimately depend on the provisions, and if this bill passes as it is then there will be certain elements of it that we would need to be clear with the authority about.

Senator CHANDLER: But that's not currently clear in the draft bill?

Mr Reed: No.

Senator CHANDLER: Mr Anderson?

Mr Anderson: The bill proposes an authority that would have a number of functions that would overlap with or duplicate existing functions of my agency. From that point of view, yes, we can continue to perform those function, and additional resourcing would certainly assist us to do that without needing to have a new authority created.

There are some things that are proposed for the new authority, though, that we do not and would not do, and I would express concerns about the potential for a perception of conflict of interest in that if, for example, an agency such as the authority is investigating agencies who are handling PIDs and is also supporting and giving advice to the whistleblowers, then there might come a point where, if different parts of the agency reach different views, the discloser or whistleblower might feel as if they don't understand why they're being supported and encouraged while another part of the organisation doesn't agree with them. I think that's a challenge.

I do think there's a question as to whether some forms of support for whistleblowers are best procured or provided by a separate body. They could be funded through government but nonetheless provided through a community legal centre that has expertise in these areas, for example. That's something that we would not do and I think would be challenging if a whistleblower protection authority was created.

There's also another question. In the bill, while disclosers would be able to make a disclosure to the authority, it's not clear that they would in fact receive all the protections that the PID Act actually provides, and we said this

in our submission. That is something that would need to be addressed whereas, of course, if a disclosure is made to us, then the whistleblower is fully protected.

Senator CHANDLER: Do any of the other panellists want to contribute to that question?

Ms O'Meagher: I have a few additional thoughts that are very much along the same lines as the Ombudsman. We do definitely see real benefit in terms of greater clarity in relation to the interactions between the proposed authority and the commission. Just on that tension, as raised by ASIC, when we investigate matters we don't do that on behalf of referrers. We see within the bill that there will be a monitoring function in relation to the commission and also the ability for the authority to seek information from us as well. You can see that a tension would potentially arise there in relation to our respective roles, and it's unclear at the moment how that would be worked through.

Senator CHANDLER: I might leave it there.

CHAIR: I will go to Senator Polley.

Senator POLLEY: It's a complicated bill in terms of oversight, but I want some advice from the Ombudsman about the existing framework and the responsibility of your office to oversee the Public Interest Disclosure Act and how that integration would work.

Mr Anderson: We have the function of overseeing the way in which the PID Act operates, other than for intelligence agencies; it's the Inspector-General of Intelligence and Security who performs that function. The challenge for us is resourcing, as I've said. We receive reports of PIDs. We receive advice of allocation decisions on PIDs. We could do more to investigate what agencies are doing. We can make recommendations to agencies that matters should be reinvestigated or should be investigated in the first place. We can make recommendations about actions agencies should take with respect to disclosers as well as with respect to other staff in the agencies. The challenge for us has been actually doing much with that function with our current resourcing, because we are focused on handling directly the disclosures we receive or complaints about disclosures. One of the challenges with the bill is that it would give similar or duplicative functions to the authority. The authority would also be able to engage with the agencies and engage with us about matters we were looking at or separately about matters that they wish to look at. So there is the potential for multiple handling on the same issues, which may not be in the interests of the disclosers or, indeed, of other parties. It's better to have overlaps than to have gaps, I think, and these things can be addressed in a range of ways, through MOUs and protocols and things like that. But it is something that would need to be considered very early on if an authority were created on this model.

Senator POLLEY: A lot of what this new authority wants to be able to do you could do with greater resourcing—is that the correct understanding?

Mr Anderson: That's correct. But there are things that the authority would do that we would not do. I've pointed already to that question. Some forms of support for whistleblowers, I think, are better provided by another entity again, not by someone who's actually doing investigations and oversight in that way.

Senator POLLEY: Currently, what is your role when it comes to whistleblowers who are experiencing reprisal?

Mr Anderson: We have the ability to examine a complaint by a discloser who is alleging that they have suffered reprisal. We have the ability to look at a report by an agency about how they have managed potential reprisal risks. We have commented publicly to the effect that we don't think agencies are very good at actively managing risks of reprisal. They will prepare a reprisal risk assessment at the start of consideration of a public interest disclosure but not necessarily have regard to it as the investigation progresses.

We provide education. We do provide assistance for disclosers as well, but in the education piece we've been targeting authorised officers in agencies—people who are authorised to receive PIDs and to consider PIDs. I think that a much greater amount of education would be of assistance to the public sector so that generally people have more of an understanding of the value of PIDs. PIDs should actually be seen as being intelligence that someone has concerns, and you should be thinking, 'Why is it that this person has concerns?' as opposed to getting bogged down in this overly legalistic, overly prescriptive process, which tends to drive the purpose of the regime out of people's minds.

Senator POLLEY: I have a question of NACC. What are some of the obligations and issues that might arise in the case of public officials that may differ from the obligations of private-sector employees, from your perspective?

Mr Reed: Sorry. I'm not quite sure that I fully understand.

Senator POLLEY: Can the obligations and issues that might arise be different from that of the public officials, as opposed to the obligations that would differ from private sector employees? Are there different issues? Are there different obligations from NACC's point of view?

Ms O'Meagher: If I'm understanding the question—I don't think so. I think the concerns of whistleblowers are probably the same in the private sector and the public sector in terms of how they go about making that report, being concerned about potential reprisal actions and being educated about what protections are available to them. I can't see a distinction between the two.

Senator POLLEY: Thank you. I wanted to know from ASIC how many whistleblowers have come through ASIC over the last, say, five years.

Mr Hackett: I mentioned a bit earlier that there have been around 700 reports from whistleblowers each year over the past 5 years. There were some significant reforms to the Corporations Act whistleblower protections that commenced on 1 July 2019, and, since that time, it's been around 600 to 700 per year. As I mentioned earlier, the definition of 'whistleblower' in the Corporations Act means that certain people who report to us will, by their position, be eligible for those protections. Those protections may not always be relevant for those people, but they do attract them when they report misconduct to ASIC.

In terms of our process, we do have information available to whistleblowers about the legal protections and how the regime works. We give that to them when they lodge reports with us. We also provide them with information and ask a series of questions, when they come to us, to try to get an understanding of any risk they may face about a potential breach of the whistleblower protections, such as suffering detriment or a breach of their confidentiality, to understand whether that aspect is relevant to them or they are just lodging an alleged breach of the law with us.

Senator POLLEY: With those 700 whistleblowers that have come through ASIC, do you see any different issues that arise between corporate whistleblowers versus the public sector whistleblowers? If so, what are the issues?

Mr Hackett: We generally receive reports about alleged corporate misconduct. We won't see reports that might also be relevant in relation to misconduct occurring in the public sector. It doesn't mean that we don't receive them, but we generally receive reports about corporate misconduct. The largest proportion of whistleblower disclosures to ASIC probably have a nature of alleged corporate governance misconduct. That's about 60 per cent or so. About 20 per cent relates to our financial services jurisdiction. These would be whistleblowers raising concerns about the operations of financial services licensees.

It is something that we are aware of, and it's something we have engaged with other public sector departments and agencies about where there may be a crossover between alleged misconduct that would occur that could be relevant to the Corporations Act and could also be relevant to the PID Act. We have the ability to engage with other agencies if there is misconduct that might cross both regimes. We have engaged with some companies out there that may also have to comply with PID Act regimes because they contract with the government, for example, and we have certainly found that engagement to be quite difficult because the two regimes working together raises some complexity.

Senator POLLEY: What sectors make up that 60 per cent of whistleblower cases? 20 per cent is finance. Where does the other 60 per cent come from?

Mr Hackett: That's how we've generally characterised the concerns that could be reported to ASIC, given we have a corporate governance corporate law regulatory responsibility. We also have a financial services regulatory responsibility. Within those reports that have a corporate governance or corporate law aspect, they could be raising concerns about solvency, they could be raising concerns about director's duties, they could be raising concerns about disputes happening within the conduct or potentially other corporate misconduct, such as fraud. There's a variety of issues that might be reported in that proportion.

CHAIR: Senator Lambie.

Senator LAMBIE: I have a question for the Ombudsman. You've been in for three years now. How many whistleblower complaints have you had during your time?

Ms Miragaya: The exact number of the complaints that have come to us would be in our annual reports. I don't have the data here, but over the last three years it would be between 100 and 150?

Senator LAMBIE: How many of those have you been able to resolve, or how many have you passed off?

Ms Miragaya: We look at all the complaints. We will make a decision about which of those require more formal investigation. There would be a smaller number of those that result in specific comments or suggestions or

might even get to a recommendation under the Ombudsman Act. Again, I think these figures would be in our annual reports.

Senator LAMBIE: Yes. I guess the nicest way to say this is that I've dealt with you guys before, and a lot of my complaints in the past have not gone anywhere—I'll be openly honest with you—and that has been because of staffing issues. We've been over this before. How many investigators do you have on your team?

Ms Miragaya: At the moment, we have a team of eight FTE and 1½ of those are dedicated to looking at complaints and investigations.

Senator LAMBIE: So you have 1½ people to look at all those complaints and investigate at the same time. Is that what you're telling me?

Ms Miragaya: Yes, that's what I'm telling you.

Senator LAMBIE: It's no wonder you can't get your job done. How many Defence complaints in the last three years?

Mr Anderson: Are you meaning Defence PIDs or Defence complaints? We have other functions—

Senator LAMBIE: Both.

Mr Anderson: I have 20 different statutory functions. Defence Force Ombudsman is not the same as the PID function, so we've dealt with 5,000 complaints about abuse in the Defence Force. Do you want to talk about those, or do you want to talk about Defence PIDs? I'm not sure about the question.

Senator LAMBIE: I'll speak about both, then. You've had 5,000 complaints since, on abuse.

Mr Anderson: On abuse suffered, or alleged to have been suffered, by people who are serving in the Defence Force, for example.

Senator LAMBIE: That's over a period of time, though, is it?

Mr Anderson: That's over a period since 2017.

Senator LAMBIE: Where are those complaints at now? We've just gone through a royal commission. Have many of those people been paid compensation? What are you doing with all that?

Mr Anderson: So \$134 million is being paid out in reparations to those people on our recommendations.

Senator LAMBIE: This is the Defence abuse stuff from 2015, and we're still paying these people out?

Mr Anderson: We've completed—

Senator LAMBIE: This has come from the DLA Piper stuff, from 2013. In 2016, we did a Senate inquiry on Defence abuse. Are you still sorting that stuff out after nine years?

Mr Anderson: We received 5,000 fresh complaints of abuse that people had suffered that not been made to the Defence Abuse Response Taskforce, the DLA Piper process or anything like that.

Senator LAMBIE: That's because that's now shut down. Is that correct?

Mr Anderson: Yes, certainly.

Senator LAMBIE: How many of these complaints in the last three years, whether they have been about Defence or anything else, have you sent to the NACC since it started?

Mr Anderson: I'd have to take that on notice. It's a very small number that we've sent on to the NACC, but we have referred some matters to the NACC.

Senator LAMBIE: Why is that, when you've got 1½ people who can investigate and do that job? You'd have to be extremely overwhelmed. Why are people sitting and waiting?

Mr Anderson: The PID scheme is a decentralised scheme by design. The agencies have the primary obligation for dealing with allegations about issues within their agency. The matters that we look at and investigate directly are generally matters that an agency is not able to deal with—for example, allegations about very senior people in the organisation. As a general rule, though, if a discloser comes to us with a concern about a particular agency, we will refer that back to the agency and ask them to investigate it.

Senator LAMBIE: So I have a complaint about the agency I'm with and go to you for help, and then you refer me back to the agency?

Mr Anderson: That's the scheme that parliament enacted.

Senator LAMBIE: Wow! How much harm is that doing those individuals? What is that costing us, the taxpayer, by doing it that way?

Mr Anderson: The fact that someone has a concern about conduct in the agency that they work in does not mean that that agency is completely unable to investigate that concern.

Senator LAMBIE: What happens when they've already been to that agency? When they've already been and gone through that and come to you, do you then send them back to the agency when that complaint has already been looked at by the agency? How many of those situations are we looking at?

Mr Anderson: If someone comes to us with a complaint about how their PID has been investigated or handled by the agency, then we will look at that ourselves.

Senator LAMBIE: Okay. How should Australia balance the benefits of a centralised whistleblower authority with risks of overlapping functions, potential confusion and inconsistent advice from existing oversight bodies?

Mr Anderson: The benefits against the challenges? As I said in my opening statement, there are certainly issues with the PID regime. There are gaps in it, and support and protection for whistleblowers are very important. The whistleblower protection authority, as proposed in this bill, won't actually address some of those issues of protections that are required for whistleblowers. For example, on the time from which the protections under the PID regime actually commence, it's my view—and we've suggested this publicly—that those protections should commence as soon as an internal disclosure is made, not as soon as it's actually accepted as a PID by an authorised officer. So there are things that could be reformed in the legislation, providing additional support for whistleblowers that is not in this bill.

Senator LAMBIE: Okay. Thank you. I have no further questions.

CHAIR: Senator Shoebridge.

Senator SHOEBRIDGE: To the New South Wales Ombudsman, thanks very much for your assistance. Having established this new whistleblower function—I think the legislation passed recently—what is your staffing of that function now? Are you fully staffed? Are you ramping up? What's the current headcount?

Mr Clayton: Thanks for the question. By way of context, at an organisational level the New South Wales Ombudsman has around 260 staff. That's to cover the broad range of functions—traditional ombudsman functions of complaint handling. In terms of our oversight over the public-interest disclosures framework, we have around 25 staff. That includes staff that provides advice to agencies. It also provides our engagement with Aboriginal and Torres Strait Islander communities and agencies, as well as our auditing and monitoring function. The subset of that, dedicated to our whistleblower support team and led by Chris Banks, is around five staff. That is what has been funded within our budget envelope. Given the PID Act is still relatively new, there's probably some maturity we need around what the optimal number of staff is, but currently we're operating with around 25 staff that are supporting the broad range of PID oversight functions.

Senator SHOEBRIDGE: I might then go to the Commonwealth Ombudsman. I might have misheard the evidence that you gave to Senator Lambie, but can you identify the number of staff handling PID complaints?

Ms Miragaya: I'd said that we have a team of eight, and I have, at this minute, 1½ of those staff focused on investigations and complaints.

Senator SHOEBRIDGE: Alright. The Commonwealth is a bigger entity than New South Wales. We have 25 staff in New South Wales—five dedicated just to helping whistleblowers. Is there anyone dedicated to just that whistleblower support role in the Commonwealth Ombudsman?

Ms Miragaya: I would say we probably have a staff member who is there to answer the inquiries that we receive from disclosers and potential disclosers looking for some assistance.

Senator SHOEBRIDGE: And did you say there were 1½ staff for investigations for PID Act referrals?

Ms Miragaya: Where people have made a disclosure to their agency and have concerns about how it's being handled, they can make a complaint to us and we will investigate those complaints, or on those occasions where we receive a whistleblower report, have concerns about sending that to an agency for investigation and feel that we need to investigate it ourselves. We take on a small number of those where we need to, and that's what those staff would be doing.

Senator SHOEBRIDGE: The Commonwealth budget is close to a trillion dollar spend in a year, and there are 1½ staff associated with investigating whistleblower complaints in one agency that's been clearly identified with it. Is that it—1½ staff?

Ms Miragaya: That can fluctuate, depending on what we've got on. We have a number of functions under the PID Act, so it can change a little bit.

Senator SHOEBRIDGE: One of the concerns that's been raised by the ombudsman and other bodies is this concern about duplication. If we're duplicating the work of 1½ staff, that's not what I'd call a major institutional problem, is it?

Mr Anderson: We haven't said that the issues about duplication are a fundamental concern; we've just said it would need to be addressed.

Senator SHOEBRIDGE: Well, you could. You've only got 1½ staff doing it. It's a bit embarrassing, isn't it?

Mr Anderson: The evidence Ms Miragaya gave was that number will fluctuate from time to time, depending on the volume of matters that are coming in.

Senator POLLEY: People want to know who we're voting for.

Senator SHOEBRIDGE: I think people do want to know who they're voting for. Well said. You say the number fluctuates. It could double or triple, and it would still only get to 4½. What's been the highest that you've known that number to be?

Mr Anderson: You're right. It's not going to get to being the 25 that New South Wales has. The New South Wales Ombudsman had a very significant increase in its funding in the last financial year or so. I think they got their funding almost doubled. I think that that's a great demonstration of—

Senator SHOEBRIDGE: The number?

Mr Anderson: the treatment of integrity agencies in different regimes.

Senator SHOEBRIDGE: What's the number? You said it fluctuates; what's the biggest it's ever been?

Mr Anderson: In the three years that I've been in the Ombudsman's Office, it probably wouldn't have been more than four or five at the most.

Senator SHOEBRIDGE: Just to be clear, the Commonwealth is bigger than New South Wales, isn't it?

Mr Anderson: The Commonwealth Ombudsman has about the same budget as the New South Wales Ombudsman in my understanding, because they've had their budget significantly increased very recently.

Senator SHOEBRIDGE: How do you think that the hundreds of thousands of people who work for the Commonwealth public sector would feel if they found that the principal agency identified with investigating their public interest disclosure matters had 1½ staff attached to that function? Do you think that would undermine confidence in it?

Mr Anderson: Firstly, we're not the principal agency responsible for investigating PIDs. Actually, it's a decentralised system. The policy is that agencies have the primary obligation and that's the same in New South Wales. That's one point I'd make. The second point, though, is that when Philip Moss reviewed the operation of the PID regime back in 2016, he said that if you want to have effective oversight, you need to properly resource it.

Senator SHOEBRIDGE: I'm not criticising you for the funds. You're dealing with the costs; you've been cut by the government. I understand that there are other enormous resources. But you're carrying the responsibility for the agency, and it's woefully inadequate funding— isn't it?—that sees you with 1½ staff members doing this critical job.

Mr Anderson: I would certainly welcome additional resourcing to carry out my functions under the PID regime.

Senator SHOEBRIDGE: I'll go to the NACC. Did you say you'd had some 5,400 corruption referrals?

Mr Reed: We had 5,400 over the last two years. Yes, that's how many have come through the door. We report on that on a regular basis.

Senator SHOEBRIDGE: And only four had come as formal disclosures under the PID Act. Is that right?

Mr Reed: Where they were mandatory referrals from agencies where a PID officer had identified that there was a corruption issue that could potentially be serious or systemic, there have only been four.

Senator SHOEBRIDGE: Have you identified, in those four, that you had four whistleblowers—is that how you've identified four whistleblowers?

Mr Reed: I don't have any further details about those four. It's just that four is the number.

Senator SHOEBRIDGE: You were asked about how many whistleblowers had been identified by the NACC, and the answer you gave was that only four have come through that process.

Mr Reed: That's right.

Senator SHOEBRIDGE: I understood you to say that there are four cases where there are whistleblowers.

Mr Reed: I'd have to—

Senator SHOEBRIDGE: Have I misunderstood you? You gave that answer in reply to my question.

Mr Reed: You may not have misunderstood me. I just said that there were only four we can identify that had come from PID officers in agencies. There have been over 220 mandatory referrals from agencies that could be serious or systemic corruption and that could be the equivalent of a mandatory referral of what might otherwise have been a PID to the organisation, but they've come as a mandatory referral from the agency about a corruption issue that could be serious or systemic—if that makes sense.

Senator SHOEBRIDGE: You were asked, 'How many whistleblowers has the NACC had referrals from?' and the answer you gave was, 'There are four matters that have come through the PID.' I therefore assumed that you had identified four matters involving whistleblowers. I'm going to ask you again: how many whistleblowers has the NACC identified as having made referrals to it?

Mr Reed: The voluntary referrals that come through are potentially people who are blowing the whistle on something, but they're not identified under the PID Act; they just come through as a corruption referral to us. At this point, we're treating those matters that come through the door as being corruption referrals that need to be assessed as to whether they fall under our jurisdiction.

Senator SHOEBRIDGE: So whether it's a whistleblower—a person who might have put their career on the line, facing all those anxieties with an agency—is not part of your initial assessment. You're not identifying people who may have those vulnerabilities. That's not what you do.

Mr Reed: We're identifying what issues they are raising—are they about a public official and are they in relation to a corruption issue. Then we have to determine, of those, which might be serious or systemic. It's quite a significant assessment process we go through.

Senator SHOEBRIDGE: You're looking at the issue, not the person?

Mr Reed: Clearly, we are looking at the person. There are vulnerable people who come through the door; there's absolutely no question about that. So we are trying to make an assessment about the matter they're bringing to us—is it within our jurisdiction or not, what would we do if it is within the jurisdiction and is it a matter that we would investigate ourselves? It would have to get to the serious or systemic threshold for an investigation. There may be other matters that get referred back to agencies or to agencies already undertaking investigations on themselves.

Senator SHOEBRIDGE: Yes, but my questions are about what, if any, protections you are putting in place for vulnerable people who would identify themselves as whistleblowers and who most people on this committee and in the public would identify as whistleblowers. I think the evidence you gave earlier was that you have witness liaison officers. Is that right?

Mr Reed: We do have witness liaison officers. If people are particularly vulnerable, even if they're coming through the assessment process, we will engage the witness liaison officers to consider how we may deal with those individuals and assist them.

Senator SHOEBRIDGE: That's the same resource that you would apply to someone who's perhaps colloquially described as the 'target' of your investigations as you would to somebody who is the whistleblower in the matter. You provide the same resource—

Mr Reed: Witnesses are not all targeted; they're not all persons of interest. Witnesses potentially are people who may have information about a particular matter.

Senator SHOEBRIDGE: I accept that.

CHAIR: Final question, Senator Shoebridge.

Senator SHOEBRIDGE: If you could just respond to my question. You are providing the same resources in the form of witness liaison officers to persons of interest, who are colloquially known as targets, as you're providing to the whistleblower—a potentially incredibly vulnerable whistleblower who came to your organisation in the first place. You're providing the same resources, aren't you?

Mr Reed: We're using the same processes to deal with people who come through. These are corruption issues, and we're trying to define whether they need to be investigated or not investigated. We understand that the more we work on a particular matter through a preliminary investigation, or a full investigation, we are dealing at times with quite vulnerable people who are not identifying as whistleblowers; they're identifying as people raising a corruption issue. We will then ensure that the protections under our act apply to those individuals where it's an issue that is actually within our jurisdiction. But most of the matters that come to us are not within our jurisdiction.

Senator SHOEBRIDGE: I don't see anything distinct that the NACC has put in place to protect whistleblowers, and, if I'm wrong in that, please feel free to answer on notice any distinct identified protections that the NACC has put in place to protect whistleblowers.

Mr Reed: We're happy to take that I notice.

Senator LAMBIE: Have you had any corruption referrals to the NACC from Defence?

Mr Reed: Yes. Publicly, in an answer to a question on notice, we identified that we've had 120 referrals about Defence.

Senator LAMBIE: But not from Defence itself?

Mr Reed: We've had mandatory referrals from Defence. I'm not sure how many of the 120 are mandatory referrals.

Senator LAMBIE: How many Defence personnel whistleblowers have come forward? How many Defence contractors have come forward to blow the whistle on what's going on in that area? How many of them do you have? How many Defence cases do you have on your books that are looking at blowing the whistle right now—anything to do with Defence?

Mr Reed: We've had 120 matters referred to us, but not all of those will necessarily end up being investigated. That's part of the assessment process we have to go through for every matter that comes as a referral to us.

Senator LAMBIE: What's the average investigation time before you get to that point?

Mr Reed: The assessment time is 86 per cent done in 90 days. At this point, when it comes to preliminary investigations and other processes, or if we were to fully investigate, there is no average timeframe that we could identify to you.

Senator LAMBIE: Mr Anderson, could you please take a question on notice about the 1.5 per cent person who is doing those cases. How many cases are sitting on that desk in front of that person right now? If you could just get that number back to me, that would be great.

Mr Anderson: I will come back to you on notice.

Proceedings suspended from 12:47 to 13:16